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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Farooq Ullah Khan
Serial No.: 09/725,437
Filed: 11/29/2000
Examiner: Qureshi, Afsar M.
Group Art Unit: 2667
Title: HYBRID ARQ WITH PARALLEL PACKET TRANSMISSION

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner For Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests review of the outstanding rejection prior to filing an appeal brief. This request accompanies Applicant's Notice of Appeal.

The rejection under 103 based upon the proposed combination of *Subbiah, et al.* and *Kallel* must be withdrawn. There is no *prima facie* case of obviousness because there is no motivation for making the combination. Adding a symbol metric as taught by *Kallel* to the *Subbiah, et al.* transmission scheme provides no benefit. Where a proposed combination provides no benefit there is no legal motivation for making it and the combination cannot be made.

The primary reference relied upon by the Examiner, *Subbiah, et al.*, is concerned with demultiplexing packets received at a node and then remultiplexing them based upon transmission to a common second node. *Subbiah, et al.* only teach using a sequence number to identify where in a sequence a minipacket should fit for such remultiplexing. The sequence number does allow for determining whether a packet (or up to 3 consecutive packets) has been lost at the IP layer. The sequence number field 214 in *Subbiah, et al.* indicates a sequence of transmissions from a single source but has nothing to do with indicating a retransmission of any packet. For example, there is

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no discussion of altering or setting the sequence number responsive to an indication that a minipacket has not been received by the intended recipient. Instead, *Subbiah, et al.* only teach using the sequence number to identify where in a sequence a minipacket should fit. There is no discussion in *Subbiah et al.* regarding retransmitting any packets (lost or not).

Kallel is concerned with an incremental redundancy "analyzed in conjunction with sequential decoding using a time out condition" (Page 1588). The symbol metric of *Kallel* is a complex formula of probabilities of receiving a group of symbols to a group of repeated bits. The repetition symbol metric on page 1590 of *Kallel* and the approach of *Kallel* provide no benefit to the *Subbiah, et al.* arrangement and, therefore, the combination of those references cannot be made. There is no reason to add the symbol metric of *Kallel* to *Subbiah et al.* because it will not in any way facilitate or fit into the demultiplexing and multiplexing scheme of *Subbiah et al.*

The symbol metric of *Kallel* has no usefulness in the *Subbiah, et al.* scheme. Therefore, the proposed combination cannot be made because it provides no benefit.

Additionally, even if the combination could be made, the result is not the same as the claimed invention. The improper combination does not provide the combination of claimed identifiers and there is no prima facie case of obviousness on that basis. For example, if the proposed combination were proper, it does not provide the three identifiers recited in claim 1. The examiner admits that *Subbiah et al.* have nothing corresponding to the claimed encoder identifier and *Kallel* does not provide an encoder identifier as claimed. The proposed combination cannot satisfy all of the limitations of any one of claims 2-9 or 11-13. This is no surprise because the primary reference relied upon by the examiner is not concerned with retransmitting packets.

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Applicant believes that no additional fees are necessary, however, the Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully submitted,

CARLSON, GASKEY & OLDS

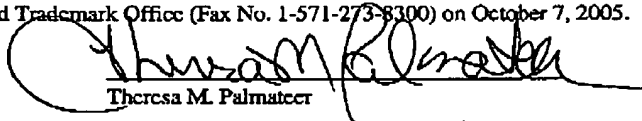
By: 

David J. Gaskey
Registration No. 37,139
400 W. Maple Rd., Ste. 350
Birmingham, MI 48009
(248) 988-8360

Dated: October 7, 2005

CERTIFICATE OF FACSIMILE

I hereby certify that this Pre-Appeal Brief Request for Review relative to Application Serial No. 09/725,437 is being facsimile transmitted to the Patent and Trademark Office (Fax No. 1-571-273-8300) on October 7, 2005.


Theresa M. Palmateer

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